

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Council adopt Ordinance 04-903, revising, amending, and restating certain sections of the Goodyear City Code pertaining to certain utility fees and procedures misstated in the prior City Code adoption, and renumbering the Public Improvements Cost Recovery Ordinance which was placed in the incorrect section when it was previously enacted. .

STAFF PRESENTER: Roric Massey
COMPANY
CONTACT:

RECOMMENDATION:

Council adopt Ordinance 04-903, revising, amending, and restating certain sections of the Goodyear City Code pertaining to certain utility fees and procedures misstated in the prior City Code adoption, and renumbering the Public Improvements Cost Recovery Ordinance which was placed in the incorrect section when it was previously enacted.

Community Benefits:

The revision will provide a complete and accurate version of the City Code book reflecting current City fees and procedures for the use of the general public, City Council, and City staff.

DISCUSSION:

A revised City Code book was adopted by the City Council in August of 2003. Subsequent to this adoption, it was discovered that revisions needed to be made in reference to some City fees and/or procedures in order that the Code Book accurately reflect current City fees and procedures. For example, the fee for account activation in Section 12-3-3 was incorrectly stated as \$25, when the actual fee is \$45. Customer service fees in Section 14-5-4 needed to be amended to change the listed \$25 fee for account activation to the correct \$45 fee, the listed \$15 turn on fee changed to the correct \$40, the listed \$15 miscellaneous field visit fee was corrected to \$40, and the listed \$40 delinquent account run on fee was corrected to \$40. This ordinance will also amend Section 14-4-3 Notice of Discontinue to accurately reflect the procedures the City follows with delinquent water bills.

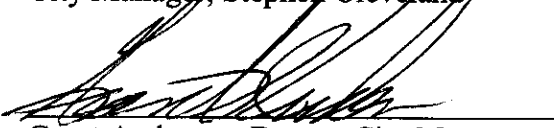
Further, this ordinance will amend City Ordinance 03-853 to renumber City Code sections for the City's Public Improvements Cost Recovery Ordinance moving the ordinance from Chapter 23 to Chapter 24. Ordinance 03-853 incorrectly placed this ordinance in Chapter 23 which is designated for Historical Preservation. This amendment makes the needed changes.


FISCAL IMPACT

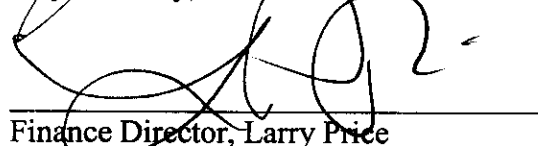
There are no direct fiscal impacts on the City of Goodyear.

REVIEWED BY:

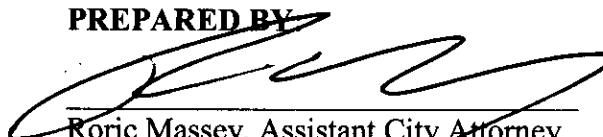

City Manager, Stephen Cleveland


Grant Anderson, Deputy City Manager


City Attorney, Jim Oeser


Finance Director, Larry Price

PREPARED BY:


Roric Massey, Assistant City Attorney

**CITY OF GOODYEAR
ORDINANCE NO. 04-903**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AMENDING CERTAIN SECTIONS THE GOODYEAR CITY CODE TO CORRECT FEES AND PROCEDURES; RENUMBERING THE PREVIOUSLY ENACTED PUBLIC IMPROVEMENTS COST RECOVERY ORDINANCE, PROVIDING FOR SEPARABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, wish to amend the City Code to correct clerical errors in the revised City Code book adopted in August, 2003; and

WHEREAS, the Mayor and Council of the City of Goodyear believe it is in the best interest of the City to amend the Goodyear City Code by adding Chapter 24 to provide authority and a procedure for the City to assess and collect the proportionate share of the cost of installing public improvements from property owners specifically and directly benefiting therefrom and to enter into repayment agreements with the party or parties who have installed the public improvements for the recovery of cost.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona as follows:

Section I: AMENDMENT OF SECTION 12-3-3 OF THE GOODYEAR CITY CODE.

Section 12-3-3 of the Goodyear City Code is hereby amended to read as follows:

Section 12-3-3

Any user applying to the city for sanitary sewer service after September 29, 1991, and not having paid a fee to activate an account in such customer's name with the city for any utility services under this chapter or Chapters 10 and 14 for the location for which the service hereunder is requested shall pay a fee of \$45 to the city to activate the account for such services; such fee shall be nonrefundable and shall be referred to as the account activation fee.

(Prior Code, § 12-3-3) (Am. Ord. 91-332, passed 8-13-1991)

Section II: AMENDMENT OF SECTION 14-5-4 OF THE GOODYEAR CITY CODE.

Section 14-5-4 of the Goodyear City Code is hereby amended to read as follows

Section 14-5-4 Customer Service Fees

The following miscellaneous fees shall be charged.

(A) *Deposit.* The deposit required under § 14-3-1 shall be collected for a new customer account as follows:

- (1) Single-family residence/owner: \$50;
- (2) Single-family residence/renter: \$50;
- (3) Commercial, including multi-family residential/industrial user: \$50.

(B) *Account activation fee.* For activation of a new customer account at an existing water service, \$45.

(C) *Miscellaneous field visit fee.* To recover costs incurred in sending a reader to a service address, \$40.

(D) *NSF check fee.* For customer payment checks which have been returned to the city by the customer's bank due to insufficient funds, \$15.

(E) *Delinquent account turn on fee.* Reconnection fee following disconnection for nonpayment of delinquent account, \$15.

(F) *Imposition of an additional fee charged against overdue water accounts.* Commencing with billings mailed on September 28, 1990, there is imposed and added to each billing a fee of 1.5% of the unpaid balance of any account which remains unpaid from the last regular monthly billing. In the event a payment plan has been agreed upon by the City Manager or his or her designee for the payment of any delinquent amount, the billing fee herein provided for shall not apply unless the customer fails to comply with the payment agreement.

(G) *Billing, payment, delinquency and discontinuance of service.* At the time of applying for services provided pursuant to this chapter, the applicant shall, if not also the owner or the property being served, provide the name, current mailing address and telephone number of the property owner. The city shall, if provided with such information about the property owner, immediately send notice to the owner that service has or is about to be commenced and that the owner will be responsible for paying any unpaid amounts upon terminating service. All rates and service charges are due and payable when rendered. Payment must be received by the due date printed on the bill. If the total amount of such bill is not paid by the due date, a notice of delinquency and intent to disconnect service will be mailed to the customer indicating the scheduled disconnect date. If the city has been notified that the consumer of utility services whose bill is unpaid is not the owner of the premises, the city shall at the same time notice is sent to the consumer mail a copy of the notice to the owner of the premises at the address provided by the owner or tenant, or, if none, to the address on record with the Maricopa County Assessor. If the total amount due on such bill or

billing for sewer services at the same address is not paid prior to the scheduled disconnect date, the notice of delinquency and intent to disconnect having been given, service will be disconnected.

(H) *Imposition of an additional administrative fee charged for giving notice of intent to terminate water service.* There is imposed and added to each billing an administrative fee of \$15 against any account with respect to which the city has sent a notice of intent to terminate service for nonpayment. If such an account includes billings for services other than water, only one fee of \$10 shall be charged with respect to a notice pertaining to such a consolidated billing.

(I) *Hearing provided.* Prior to terminating service for nonpayment of amounts due, if there is any dispute concerning the monies owed, an opportunity will be provided for a hearing for the consumer or owner of the property with the City Manager or his or her designee.

(J) *Owner responsible for payment of all charges.* Provided the city sends the notice to the owner (assuming the city has been given the name and address of the owner), if other than the customer, the owner shall be responsible for payment of all charges, including interest and penalties to the same extent as the consumer, whether or not such notice is actually received. Service shall not be reinstated until the account is paid in full. The designee of the City Manager shall have authority to compromise disputed billings.

(Prior Code, § 14-5-4) (Am. Ord. 90-306, passed 9-11-1990; Am. Ord. 91-333, passed 8-13-1991; Am. Ord. 98-622, passed 9-14-1998; Am. Ord. 02-823, passed 9-23-2002)

Section III: AMENDMENT OF SECTION 14-4-3 OF THE GOODYEAR CITY CODE.

Section 14-4-3 of the Goodyear City Code is hereby amended to read as follows

Section 14-4-3 NOTICE OF DISCONTINUANCE OF SERVICE.

(A) It is the policy of the city to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills.

(1) All bills are due and payable on or before the date set forth on the bill; and

(2) If any bill is not paid by or before that date, a disconnect notice will be mailed stating that if the amount due is not paid within ten days of the mailing of the disconnect notice, service will be discontinued for nonpayment; and

(3) That any customer disputing the correctness of his bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his choosing and may present orally or in writing his complaint and contentions to the city official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final

determination of the customer's complaint. Only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.

(B) When it becomes necessary for the city to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a turn-on charge in the sum of \$40.

**Section IV: AMENDMENT OF ORDINANCE NO. 03-853 AND THE
RENUMBERING OF THE SUBJECT MATTER CONTAINED
THEREIN.**

Ordinance No. 03-853, which was adopted on August 11, 2003 is hereby amended to read as follows:

CHAPTER 24 PUBLIC IMPROVEMENTS COST RECOVERY

Article 24-1 PUBLIC IMPROVEMENTS COST RECOVERY IN GENERAL

24-1-1	Title
24-1-2	Purpose
24-1-3	Definitions
24-1-4	Construction of Special Public Improvements
24-1-5	Authorization of Agreements
24-1-6	Terms; Collections, and Costs.
24-1-7	Reimbursement Amounts Payable to City
24-1-8	Notice of Intention to Approve Special Public Improvements
24-1-9	Assessment Districts, Improvement Districts; General Obligation Bond Projects; Cost Apportionment

Section 24-1-1 Title

This Ordinance shall be known as the Public Improvements Cost Recovery Ordinance.

Section 24-1-2 Purpose

This ordinance is intended to provide for the extension of Special Public Improvements into undeveloped areas of the City by supporting the extension of such improvements and providing for recovery of the costs of such improvements from the owners of parcels who specifically benefit from such improvements and who are not subject to any other Assessments or special charges for the benefit which they receive from the Special Public Improvement. This ordinance further creates a procedure whereby the party or parties who

have advanced the funds for the extension of Special Public Improvements may enter into agreements with the City to be reimbursed by the City.

Section 24-1-3. Definitions

The following words, terms and phrases, when used in this article shall have the meanings set forth below, unless the context clearly indicates a different meaning:

Benefited Party means the person or entity creating a demand for or otherwise utilizing Special Public Improvements resulting in a special benefit for which the benefited party has not specifically contributed to the costs of providing such Special Public Improvements.

City means City of Goodyear, Arizona.

Costs means the actual cost of:

1. Land or real property, right of way or easement acquisition if allowed by law and approved by the City;
2. Construction of the Special Public Improvements as determined by the construction contract price or by the actual costs, such construction to include, but shall not be limited to construction and installation of water pipes, lines, tanks and wells, sanitary, irrigation and storm sewer lines and systems, asphaltic and concrete paving, curb, gutter and sidewalks, street lights, traffic signals, bus bays, drainage structures, bridge structures, public park improvements and public landscaping and public facilities such as police and fire stations, all to the extent allowed by law.
3. Inspection, testing and permit fees;
4. Engineering and design fees required for preparation of plans and specifications;
5. Administrative charges paid to the City by the developer or owner;
6. Incidental fees, expenses and charges approved by the City.

Development Agreement means an agreement between one or more parties and the City pursuant to §9-500.05 Arizona Revised Statutes.

General Public Benefit means that portion of the expense of the Special Public Improvement which is deemed by the City to indirectly benefit the entire City not withstanding the fact that the Special Public Improvement specially benefits the property subject to reimbursement.

Reimbursement Amount means the charge which must be paid to the City and imposed upon the owner or developer of property which has or will receive the benefit of Special Public Improvements benefiting their property.

Special Benefit means a benefit to a specific parcel of real property from a Special Public Improvement based on criteria established by the City.

Special Public Improvements means any publicly dedicated rights-of-way, any street, drainage, water or sewer improvements or facilities or any other improvements of facilities which are financed by bonds, general funds, private development funds, water utility funds or sewer utility funds, or a community facilities district or improvement district and for which reimbursement is requested under this ordinance.

Section 24-1-4. Construction of Special Public Improvements.

Prior to a permit being issued for construction of Special Public Improvements for which a reimbursement amount is being requested, the following requirements shall be met:

- A. A map, drawing or diagram describing all property which will be benefited by any Special Public Improvements to be installed shall be provided to the Community Development Department and the Public Works Department.
- B. The field engineering, plans and specifications required for the Special Public Improvement may be prepared by the party seeking reimbursement or the City. If prepared by the party seeking reimbursement they must be approved by the Community Development Department. The engineering costs for preparation of plans and staking of the Special Public Improvements only, which are incurred by the party seeking reimbursement, may be included as determined by the Community Development Department in the agreed construction costs as provided in this section.
- C. For any Special Public Improvements which are constructed, the party seeking reimbursement shall cause to be furnished and installed to City specifications all facilities within the boundary of the designated area of the development.
- D. Detailed plans and specifications for Special Public Improvements which are extensions to existing public facilities must be approved by the Community Development Department and Public Works Department prior to construction. The costs for preparation of plans and specifications, diagrams, legal descriptions and other information required to comply with this article shall be assumed by the party seeking reimbursement but are subject to reimbursement under terms of this Ordinance.
- E. The project shall be procured, financed and constructed in accordance with Arizona law, City Code requirements and as determined by the City. The burden is on the initial person, whether it be an owner, developer, contractor or other, to prove costs

associated with the improvements. The costs shall be formally presented to the City Council for its approval, modification or rejection. Thereafter the approved costs shall be termed "Reimbursement Amount".

Section 24-1-5. Authorization of Reimbursement Agreements.

- A. In conjunction with the planning or development of any property for which a Special Public Improvements project will be constructed, the developer or owner paying the costs of the Special Public Improvements may request the City to enter into an agreement to collect reimbursement amounts from the developers and owners of parcels specially benefited by the project.
- B. Upon completion of construction of Special Public Improvements the cost of which were financed by bonds issued by the City or a community facilities district, including improvement or assessment bonds or private development funds, the City may impose upon and collect reimbursement amounts pursuant to the terms of this article.
- C. The City Council or its designee shall be authorized to enter into reimbursement agreements under this article for the purpose of reimbursing the party or parties paying the cost of the Special Public Improvements where the costs for such Special Public Improvements exceed the proportionate share of the parties paying for the Special Public Improvements. Such agreements shall become effective when recorded in the office of the Maricopa County Recorder.
- D. No improvements constructed pursuant to this article shall be subject to both reimbursement agreements under this article and assessments pursuant to law.
- E. Any costs advanced by the party or parties paying for Special Public Improvements or for the general public benefit which all or part of such improvements are provided for in the City's Capital Improvement Program ("CIP") Master Utility Service Plans and/or Impact Fee Ordinances shall be reimbursed to the party or parties paying of such improvements through Impact Fee Credits. Any portion of the cost for Special Public Improvements or improvements which benefit the general public which is not provided for in the City's CIP shall be reimbursed to the party or parties who incurred the cost through a reimbursement agreement with the City.

Section 24-1-6. Reimbursement Agreements; Terms; Collections, and Costs.

- A. The reimbursement agreement shall designate the parcels and persons who are entitled to reimbursement amounts and shall include a map, drawing or diagram of the properties and respective amounts from which reimbursement amounts may be collected. In the event bonds of the City, including Improvement District, or Community Facilities District or assessment bonds, have been issued to finance the construction of the Special Public Improvements and related facilities, the City shall receive all reimbursement amounts and apply such amounts to the debt service funds of the applicable bond issue.

- B. The reimbursement agreement shall set forth the total of the reimbursement amount to be paid to the City, which shall repay such reimbursement amounts to the person or entity entitled thereto, including a community facilities district. The total of such reimbursement amounts shall not exceed that portion of the agreed construction costs of the Special Public Improvement allotted to property outside the area of the owner. The reimbursement agreement shall terminate in fifteen (15) years from the effective date of the reimbursement agreement or when the total amount provided for by this article is repaid, whichever is earlier.
- C. The approved construction costs as described in Section 24-1-4E will be used for calculation of all reimbursement amounts.
- D. Upon entry into a reimbursement agreement with the City, the owner shall have the right to connect into the Special Public Improvement in consideration for entry into the reimbursement agreement.
- E. The field engineering, plans and specifications required for a Special Public Improvement shall be prepared by the developer and approved by the Engineering Department prior to completion of construction. The engineering costs for preparation of plans and staking of the Special Public Improvements on the property which are incurred by the owner may be included as determined by the engineering department as provided in this article. The City, or its designated representative, will perform the inspections during construction.
- F. The City shall have sole and exclusive control of connections to the Special Public Improvement. Connections to the Special Public Improvement may only be made upon issuance of a written permit from the Community Development Department. It shall be unlawful to make a connection to a Special Public Improvement without a permit. Such unlawful connections may be removed by the City and the costs of removal assessed to the party making connection.
- G. Upon final plat or site plan approval (at City's option) the owners of the benefited property shall pay 100 percent of the benefited property's share of the cost of the Special Public Improvement to the City.
- H. An annual charge will be assessed pursuant to a procedure adopted by the City for the administration of each reimbursement agreement. This annual charge shall be the greater of one hundred dollars (\$100.00) per year or one-half of one percent (.5%) of the outstanding balance due under the agreement.
- I. Any owner may assign the benefits arising out of any reimbursement agreement with the City. Such assignments alone shall not relieve the owner from its duties and obligations under the agreement. The assignment shall require prior written notice to the City.

Section 24-1-7. Reimbursement Amounts Payable to City.

- A. When a Special Public Improvement is constructed by the City or a developer or their contractors to provide service or benefit to a parcel of an owner, which owner or their predecessors in interest did not pay for any of the costs of the Special Public Improvement, the City may impose and collect a reimbursement amount. The reimbursement amount shall be based on the benefited parcel's share of the benefit received as compared to the total cost of the Special Public Improvement. The reimbursement amount shall be paid to the City prior to the issuance of final plat or site plan approval at the City's option.
- B. It shall be unlawful for any person to extend service from a Special Public Improvement to his or her property for which a reimbursement amount has been imposed without first paying the reimbursement amount and obtaining a permit issued by the Community Development Department.
- C. The reimbursement obligation under this section shall terminate in fifteen (15) years from the effective date of the reimbursement agreement or when the total amount provided for by this article is repaid, whichever is sooner.
- D. The City shall collect reimbursement amounts for any Special Public Improvements provided by the developer or financed by improvement district assessment district bonds, a community facilities district, water utility funds, sewer utility funds, development fee funds and general obligation bond funds which were specifically designated as subject to reimbursement from Special Public Improvement reimbursements.
- E. To the extent the developer advances funds to construct under this article which are for the general public benefit, the developer shall receive repayment under the provisions of this article.

Section 24-1-8. Notice of Intention to Approve Special Public Improvements.

- A. Prior to commencement of Special Public Improvements which the Community Development Department has determined to be necessary for the public health, safety and welfare which are to be constructed prior to the development of the adjacent or nearby property but for which the adjacent or nearby property will be specially benefited, a resolution of intention to approve the Special Public Improvements shall be submitted to the City Council. The resolution shall include supporting materials which explain the methodology used by the Community Development Department for determining which property was benefited and the amount or extent of the benefit of the Special Public Improvement to those designated benefited properties.
- B. Prior to acting on the resolution of intention to order the Special Public Improvements, the City Council shall hold a public hearing. The public hearing shall be for the purpose of receiving comment on whether the proposed Special Public Improvements are required for the public health, safety, welfare and convenience. Those owners of real property within the area subject to reimbursement for Special Public Improvements shall receive notice in writing of the public hearing and any

continued public hearing not less than ten (10) days prior to the public hearing or continued public hearing. Any such notice shall include a copy of any supporting materials which explain the methodology used by the engineering department for determining which property was benefited and the cost or extent of the Special Public Improvement to the benefited property. The party requesting the Agreement shall pay the cost of providing such information.

- C. After the public hearing is concluded, the City Council shall determine whether the public health, safety and welfare require the Special Public Improvements. If the City Council so determines, then the City Council shall adopt the resolution of intention to approve the Special Public Improvement. The determination shall include a statement that the owners of specially benefited property from the improvements shall be required to reimburse the City for the benefit received from the Special Public Improvement.
- D. The resolution of intention to order the Special Public Improvement shall contain:
 - (1) A description of the estimated total cost of the special improvement.
 - (2) A general description of the estimated total cost and cost per frontage foot or cost per acre of the proposed Special Public Improvement.
 - (3) A description of the Special Public Improvement project area and a map and list of all owners of real property who will be receiving a special benefit from the construction of the Special Public Improvement.
 - (4) A determination of that portion of the Special Public Improvement which is for general obligation bonds, special assessments or improvement which is for general public benefit and that portion which is for special benefit of the owners.
 - (5) A preliminary estimate of the portion of the Special Public Improvement which will be financed with general obligation bonds, special assessments, a community facilities district, or improvement district assessments and the portion which will be financed with reimbursements for Special Public Improvements.
- E. The City Council's decision on necessity for Special Public Improvements shall be final and conclusive.

Section 24-1-9. Assessment Districts, Improvement Districts; General Obligation Bond Projects; Cost Apportionment.

- A. Upon collection of reimbursement amounts pursuant to any Special Public Improvement which is located in a municipal district and financed by assessments, including a community facilities district, such funds shall be deposited with the finance director. The funds shall be applied against the outstanding indebtedness for which bonds are to be or have been issued.

- B. Reimbursements for special improvements may be used in combination with any bond issue, permitted by law, provided that the bond issue question submitted to the qualified electors indicates that such reimbursements may be required of benefited property owners. All amounts collected from such reimbursements shall be deposited in the appropriate bond fund from which the Special Public Improvement project is financed.

Section V PROVIDING FOR SEPARABILITY

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions of the ordinance or parts thereof.

Section VI. EFFECTIVE DATE

This Ordinance shall become effective on the date provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona this ____ day of _____, 2004.

James M. Cavanaugh, Mayor

ATTEST:

Dee Cockrum, City Clerk

APPROVED AS TO FORM:

James H. Oeser, City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, the undersigned Dee Cockrum, being the duly appointed, qualified City Clerk of the City of Goodyear, Arizona, certify that the foregoing Ordinance 04-903, passed and adopted at a City Council Meeting of the Council of the City of Goodyear, Maricopa County, Arizona held on the 14th day of June, 2004, at which a quorum was present and, by a ____ vote, voted in favor of said ordinance.

Given under my hand and seal, this ____ day of _____, 2004.

Dee Cockrum, City Clerk